

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ANDINA PROPERTY LLC,

Plaintiff,

v.

LAURA FOX,

Defendant.

Case No. 20-cv-00320-PJH

**ORDER REMANDING ACTION TO  
STATE COURT AND DENYING  
REQUESTED ENFORCEMENT**

Re: Dkt. No. 9

The court is in receipt of self-proclaimed defendant “Tom Hernandez of-the-Ramirez family’s” (“Hernandez”) Ex Parte Motion “for the Enforcement of the Automatic Stay due to the Jurisdiction of the Federal District Court.” Dkt. 9. In it, Hernandez requests that this court issue an order that (1) voids any filing or order made in the San Francisco Superior court action (CUD-19-664902) since this matter has been removed to this court and (2) limits the scope of any order that a state court officer may make pending this action’s maintenance in this court. Dkt. 9 ¶ 8.

Based on the underlying state court complaint (Dkt. 5-2 at 4-7), this court lacks federal subject jurisdiction over this action. Significantly, Hernandez is not a named party to this action, Dkt. 5-2 at 5 ¶¶ 6-7, the only claim presented in the underlying complaint (for unlawful detainer, *id.* at 4) is non-federal in nature, and the “[a]mount demanded does not exceed \$10,000,” *id.* On February 4, 2020, Magistrate Judge Corley issued a screening order directing Hernandez to address these apparent shortcomings<sup>1</sup> and

---

<sup>1</sup> Dkt. 6 at 1 (“The Court, however, ORDERS Mr. Hernandez to show cause as to (1) how he has standing to remove the action from state court, and (2) why this case should not be remanded to the San Francisco Superior Court for lack of subject matter jurisdiction.”).

Hernandez failed to provide any response. Given such failure, the court concludes both that Hernandez may not seek the relief requested because he lacked standing to remove this action, 28 U.S.C. § 1441(a) (“any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed **by the defendant or the defendants** . . .”) (emphasis added), and that the court lacks federal subject matter jurisdiction over this action under both a federal question theory, U.S. Bank Nat. Ass’n v. Terrenal, 2013 WL 124355, at \*2 (N.D. Cal. Jan. 8, 2013) (no federal question jurisdiction where “[t]he complaint asserts only one state law claim for unlawful detainer”), as well as a diversity jurisdiction theory, 28 U.S.C. § 1332(a) (requiring that “the matter in controversy exceeds the sum or value of \$75,000”). To the extent Hernandez relies upon the numerous purported federal law violations by plaintiff listed in the notice of removal, Dkt. 1 at 2-4, he has failed to show how any such violations confer federal jurisdiction here. In any event, even if the court generously construed such violations as affirmative defenses, they would still would not provide a basis for removal. Caterpillar Inc. v. Williams, 482 U.S. 386, 393 (1987) (“Thus, it is now settled law that a case may *not* be removed to federal court on the basis of a federal defense . . .”) (emphasis in the original). As a result, the court **DENIES** Hernandez’s requests and sua sponte **REMANDS** this action to the San Francisco Superior Court. Consequently, the court **TERMINATES** Judge Corley’s March 2, 2020 report and recommendation (Dkt. 7).

Separately, the court notes that this removal is either the second or third time<sup>2</sup> that this action (CUD-19-664902) has been removed. On November 8, 2019, Chief Magistrate Judge Joseph C. Spero in Andina Property LLC v. Fox, et al., 19-cv-6168-JCS ordered this action remanded to San Francisco Superior Court following its September 30, 2019 removal by defendant Laura Fox (“defendant Fox”). Dkt. 10 at 3. Neither Hernandez nor defendants have demonstrated any change in pleading justifying

---

<sup>2</sup> It appears that another self-claimed defendant, “Rodney Nathaniel of-the-Masterson-family,” separately removed this action in Rodney Nathaniel of-the-Masterson-family v. Andina Property LLC, et. al., 20-cv-0320-JSW. Dkt. 1 at 1 (noting “CUD-19-664902” as the underlying state court case number).

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Hernandez’s January 15, 2020 removal. The court warns that any improper subsequent removal by defendant Fox (or others on her behalf) will be subject to the appropriate sanctions.

**IT IS SO ORDERED.**

Dated: March 12, 2020

/s/ Phyllis J. Hamilton  
PHYLLIS J. HAMILTON  
United States District Judge